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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Telephone Number Portability)

CC Docket No. 95-116
RM 8535

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REPLY COMMENTS OF CABLEVISION LIGHTPATH, INC.

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To: The Commission

REPLY COMMENTS OF CABLEVISION LIGHTPATH, INC.

Cablevision Lightpath, Inc. ("Lightpath"), by its attorneys, hereby submits these reply comments in response to the Commission's Notice of Proposed Rulemaking^{1/} in the above-captioned proceeding. Lightpath generally supports the sentiments of the commenters in favor of service provider number portability solutions that foster competition and are efficient and cost-effective. In order to limit barriers to competitive entry into the local exchange marketplace, Lightpath believes that the Commission should encourage state involvement in the development of number portability solutions and compel local exchange carriers ("LECs") to provide short-term number retention mechanisms while longer-term solutions are being developed.

I. INTRODUCTION AND SUMMARY

Lightpath is a wholly owned subsidiary of Cablevision Systems Corporation ("CSC"), which is the nation's fifth largest cable television operator with more than 2.5 million subscribers in 19 states. As a competitive local exchange service provider, Lightpath intends

^{1/} Telephone Number Portability, Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC No. 95-284 (released July 13, 1995) ("Notice").

to provide a broad range of telecommunications services, including point-to-point and switched circuits for voice, video, and data. Lightpath currently provides dedicated and switched intrastate telecommunications service in Long Island, New York. In addition, Lightpath's subsidiaries are authorized to provide non-switched telecommunications service in Ohio as well as all forms of telecommunications in Massachusetts.^{2/} One of Lightpath's subsidiaries has also recently applied for authorization to provide telecommunications service in Connecticut.^{3/}

Lightpath concurs with the substantial majority of commenters who believe that service provider telephone number portability would serve the public interest. The overwhelming position of commenters in this proceeding is that if robust local competition is to develop, telecommunications customers require service provider number portability or they will not switch from their incumbent local service providers.^{4/} Accordingly, Lightpath believes that the Commission should develop a strong national policy framework favoring number portability. In recognition of the substantial progress that has already been made

^{2/} In the Matter of the Application of Cablevision Lightpath, Inc. Application for Certificate of Public Convenience and Necessity to Provide Interexchange Service to the Cleveland, Ohio Metropolitan Statistical Area, Finding and Order, Commission Case No. 92-1224-TP-ACE, Dec. 23, 1992; Cablevision Lightpath, Inc. Authorization to Provide Telecommunications Service in the State of Massachusetts, Docket No. DPU 92-192, approved Feb. 1993.

^{3/} This application is still pending. In the Matter of Cablevision Lightpath - CT, Inc. Application for Certificate of Public Convenience and Necessity to Provide Services Within the State of Connecticut, Application, Docket No. 95-07-19, July 27, 1995.

^{4/} Comments of MCI Telecommunications Corporation at 2; Comments of the Ad Hoc Coalition of Competitive Carriers at 4; Comments of Time Warner Communications Holdings, Inc. at 6; Comments of The Telecommunications Resellers Association at 4; Comments of the Association for Local Telecommunications Services at 5; Comments of the Public Utilities Commission of Ohio at 1.

among the states to promote number portability, however, the FCC should refrain from adopting regulations that thwart or impede state efforts to develop innovative number portability solutions. Instead, the FCC should develop a national number portability policy that allows for statewide and regional number portability solutions.

In mandating federal guidelines for number portability, the Commission should compel incumbent LECs to provide interim number retention measures such as remote call forwarding ("RCF"), direct inward dialing ("DID"), and Trunk Route Indexing during the transition to permanent solutions. While such interim measures have significant limitations, the plain fact is that they are necessary in the short term to foster the development of local competition. Moreover, to promote local competition on an equitable basis, the Commission should mandate that the costs of number retention are reasonable and that they are spread fairly among all beneficiaries.

Finally, because many of the existing interim number retention mechanisms are inefficient and technically inferior to permanent database portability, the Commission should provide incumbent LECs with ample incentives to implement permanent number portability solutions expeditiously. Any such long term solution should not affect call quality or service availability, and should promote efficient utilization of numbers and foster the rapid introduction of competitive telecommunication services. As with the costs for interim number retention, the costs of implementing permanent number portability should be borne by all customers and competitors. In addition, although it is not necessary for the Commission to establish a standard number portability database, the number portability mechanisms ultimately adopted should be compatible and interoperable across the country.

II. SERVICE PROVIDER NUMBER PORTABILITY WILL SERVE THE PUBLIC INTEREST

Lightpath agrees with the substantial majority of commenters that service provider number portability for geographic telephone numbers will serve the public interest.^{5/}

Lightpath has found in the various markets in which it is providing competitive local service that number portability is critical in enabling it to compete with entrenched incumbent LECs. Because interim number retention measures are inefficient and technically inferior, however, the Commission should strive to promote permanent number portability solutions as rapidly as possible. To this aim, the Commission should encourage the states to continue efforts to implement innovative and efficient number portability solutions.

A. Number Portability Benefits All Consumers

Contrary to the claims of various LEC commenters,^{6/} service provider number portability is a precondition to effective robust local competition.^{7/} Studies show that without the ability to retain their telephone numbers, subscribers will not switch from incumbent local service providers to new competitors.^{8/} By promoting competition,

^{5/} See, e.g., Comments of Jones Intercable at 1-2, 6; Comments of the National Association of Regulatory Utility Commissions at 2, 4; Comments of MFS Communications Co., Inc. at 2.

^{6/} See, e.g., Comments of NYNEX at 7; Comments of Ameritech at 7-8 .

^{7/} The Commission's focus at this time should be on developing regulations to promote service provider number portability. See, e.g., Comments of NYNEX at 3; Comments of the New York State Department of Public Service ("NYPSC") at 1; Comments of Pacific at 2; Comments of Time Warner at 5-6. The Commission should phase in the various types of number portability over time, starting with service provider number portability followed by other forms. Comments of NYNEX at 4-5.

^{8/} See, e.g., Comments of MFS Communications Co., Inc. at 2-4; Commission of the Ad Hoc Coalition of Competitive Carriers at 2-3.

consumers will benefit from lower rates, better service, innovative service offerings, and enhanced choices.

In Lightpath's experience, number portability has been of critical importance to consumers when contemplating whether to switch services. Additionally, studies confirm that a lack of number retention is a significant deterrent among consumers to changing local telephone companies.^{9/} For instance, Time Warner's research supports findings regarding the importance of number portability to consumers.^{10/} Indeed, even the LECs' own market survey illustrates the importance of number portability.^{11/}

B. The Commission Should Not Preempt States From Involvement In The Development Of Number Portability

Given the paramount importance of service provider number portability in promoting local competition,^{12/} and the fact that the Commission itself has recognized its substantial effect on the nation's numbering system,^{13/} the Commission should manage the transition

^{9/} See, Notice at 9 n.26.

^{10/} See Comments of Time Warner Communications Holdings, Inc. at 6-7 and Appendix A.

^{11/} See Comments of The Pacific Companies at 3-4, 6-8. Despite Pacific's efforts to distort the results of its research, the Commission should examine the plain evidence in light of actual experience. Several state Public Utility Commissions that clearly have substantial firsthand experience with telecommunications services further support the importance of local number portability in promoting competition. See, e.g., Comments of the Ohio Public Utility Commission at 1, 3.

^{12/} See, e.g., Comments of Jones Intercable at 2,6; Comments of the National Association of Regulatory Utility Commissions at 4.

^{13/} See Notice at ¶ 6; see also Notice at ¶ 58 ("exhaustion of telephone numbers has become a significant problem in numerous metropolitan areas, and the use of RCF as a long-term solution for number portability likely will exacerbate these problems").

from short-term number retention mechanisms such as RCF and DID to more permanent portability solutions. Further, the Commission should stress the importance of attaining such long term solutions as rapidly as possible.^{14/} What the Commission should not do, however, is preempt the states from continuing to develop and implement number portability solutions.^{15/}

Lightpath agrees with commenters who assert that the Commission should not mandate a specific number portability solution.^{16/} Instead, the Commission should develop a general regulatory framework that will promote the rapid development of interoperable permanent service provider number portability solutions. These guidelines should go beyond mere statements of principle, but should instead establish a "baseline framework" for the continued development of permanent number portability solutions. What they should not do, however, is thwart or delay state efforts to promote number portability.

As state regulatory commenters have vigorously argued, states should be allowed (and encouraged) to continue to develop number portability solutions so as to promote emerging

^{14/} In this regard, there is absolutely no merit to the claim that even after true number portability becomes technically feasible, additional time will be necessary to educate consumers. See Comments of Airtouch Paging and Arch Communications Group at 6. Such arguments merely seek to promote unnecessary delay.

^{15/} Thus, the Commission should reject the arguments of parties that urge preemption. See Comments of America's Carriers Telecommunications Association at 6. Comments of Bell Atlantic at 21-22; Comments of The Telecommunications Resellers Association at 15.

^{16/} See, e.g., Comments of NYNEX at 2; NYPSC at 5-6.

local competition today.^{17/} The states have a demonstrated and key role in developing and monitoring portability trials and the FCC should not act to undermine this function in any way.^{18/} Many states have stimulated the various number portability trials and experiments that have occurred and have thereby made significant progress toward permanent number portability solutions. For example, in March 1995, New York issued an order requiring interim service provider number portability and directing a study of the feasibility of a trial of true service provider portability.^{19/} Lightpath and its customers have benefitted directly from these efforts.

Indeed, without the work that states like New York have been performing, Lightpath might not have access today to the critical interim measures that it now uses to provide local service. As an example of the importance of development of number portability solutions at the state level, Lightpath is exploring the feasibility of using Trunk Route Indexing rather than RCF as an interim number retention mechanism.^{20/} Trunk Route Indexing appears to be more efficient than, for example, RCF. Unlike RCF, which requires line-by-line transfer

^{17/} See, e.g., Comments of the California Public Utilities Commission at 2; see also Comments of the Illinois Commerce Commission at 9-10 (stressing that states can serve as laboratories for national solutions); Comments of the New York Public Service Commission at 5; Comments of the Ohio Public Utilities Commission at 2-3; Comments of the National Association of Regulatory Utility Commissioners at 5 (urging that the states be permitted and encouraged to proceed with their existing and future workshops, trials, and tests); accord, Comments of MFS Communications Company at 7 (noting the two scheduled trials in New York); Comments of Pacific Companies at 9.

^{18/} See Comments of Time Warner Communications Holdings, Inc. at 24.

^{19/} See, e.g., Comments of NYPSC at 2.

^{20/} Iowa has permitted Trunk Route Indexing as an interim number retention solution. See McLeod TeleManagement, Inc., Final Decision and Order, Iowa Department of Commerce Utilities Board, Docket No. TCU-94-4 at 11 (rel. March 31, 1995).

of each call directly from the incumbent's end office to the competitor's switch, Trunk Route Indexing would route calls over the trunk network directly to the competitor's interconnection facilities. Also unlike RCF, Trunk Route Indexing should permit end-user subscribers to retain access to CLASS features.

Finally, although the states continue to provide valuable resources to support the development of number portability, the Commission need not await the completion of these state trials before implementing its own portability guidelines. Instead, the Commission's processes should go forward and be informed by the various efforts at the state level.^{21/}

III. NUMBER RETENTION IN THE SHORT TERM IS VITAL TO LOCAL COMPETITION

Despite their many flaws, interim portability measures are nonetheless necessary for competitive reasons at least until better solutions evolve.^{22/} Interim measures suffer from various competitive and technical limitations that render them unacceptable as permanent portability solutions. In order to pursue effective local competition at this time, however, the Commission must ensure that the current interim number retention mechanisms are available to all competitors and that the costs of interim number retention are reasonable based upon incremental costs and are spread equitably among all customers and carriers.

^{21/} In this regard, the FCC should clarify that state regulators may adopt swifter implementation schedules than whatever timetable is adopted by the Commission, but they may not thwart or frustrate the development of service provider number portability as required by the Commission's schedule. In this manner, the Commission will foster the rapid development of innovative solutions in individual states without waiting for a national solution. See Comments of Time Warner Communications Holdings, Inc. at 24.

^{22/} Because these interim mechanisms are not truly "number portability" mechanisms, Lightpath refers to "number retention" as the equivalent to the Commission's term "interim number portability." See Notice at ¶¶ 55-63.

A. Interim Number Portability Measures Are Unacceptable As Longer-Term Solutions

Lightpath agrees with the various commenters who note that existing interim measures have enhanced competition.^{23/} In fact, no demonstrable competition could have occurred without these measures. However, there should be no doubt that interim number retention measures do not provide true number portability and should not be viewed as even remotely acceptable substitutes for a permanent portability solution.

Not only have some LECs substantially understated the competitive and technical deficiencies associated with interim number retention,^{24/} but some now urge the Commission to conclude that the interim number retention mechanisms are in themselves sufficient.^{25/} These contentions are bogus and should be rejected.

1. Interim Number Retention Measures Have Various Competitive And Technical Limitations

Both RCF and DID require all calls to the customers of competitive carriers to be routed through incumbent LEC switches. Not only does this ensure that incumbent LECs will

^{23/} See, e.g., Comments of NYNEX at 7.

^{24/} For example, NYNEX cites customers' reluctance to pay for number retention under existing interim options, which results from the loss of certain CLASS features. See, e.g., id. at 8.

^{25/} See id. at 2, n.2. Comments of the Pacific Companies at 29 (noting the benefits of "time availability, cost, and end user impact."); Comments of United States Telephone Association at 12 (noting that interim mechanisms provide portability and that existing tariffs have not been found unlawful or unreasonable).

continue to receive access revenues for interexchange calls,^{26/} but it also permits incumbent LECs to retain control over the routing and features available to these customers. Incumbent LECs will also continue to enjoy various other benefits such as access to the proprietary information of competitors.

In addition to the foregoing competitive deficiencies, interim portability measures such as RCF and DID also suffer from various technical limitations. As the Commission has recognized, these measures are inefficient and contribute to number exhaustion, prevent subscribers from receiving certain custom local area signalling ("CLASS") features, and require longer call setup times.^{27/}

In view of these significant limitations, the Commission should promote the deployment of a database number portability solution that is both competitively neutral and free of the technical problems that currently benefit the incumbent LECs. Unlike the interim options discussed above, database number portability will provide seamless, efficient call set-ups and stave off number exhaustion. Until the advent of a true number portability solution, competitors will not have access to the same revenue streams as the incumbent LECs and

^{26/} Incumbent LECs should not be permitted to retain all access charges received from interexchanging carriers ("IXCs") for calls completed to customers of competitive carriers. Competitive carriers provide local switching and loop facilities to complete calls originated by an IXC to a ported number. Incumbent LECs may provide some or all of the transport to complete that call. Therefore, both parties should receive compensation for the completion of a call based on the facilities that each provides. Incredibly, some LECs now urge the Commission to guarantee that they can receive interstate access charges for all calls routed through their network, even though there is no efficient, cost-effective alternative. See Comments of Bell Atlantic at 4-7.

^{27/} See Notice at ¶¶ 58-60; see also Comments of MCI and MCImetro at 21-22.

will be unable to offer the full panoply of services currently available through the incumbent LECs.

B. Even Though Interim Number Retention Is Flawed, The Commission Should Mandate Its Availability

Despite their numerous defects, in the absence of longer-term number portability solutions the use of interim number retention measures is essential for competitors to gain effective entry into local exchange markets. The Commission should likewise mandate the preservation and availability of current number retention mechanisms until longer-term database solutions are available.

The Commission should specifically compel all incumbent LECs to make available both RCF and DID, as well as any others that may develop such as route indexing, to any competitive entrant requesting these services. This is consistent with the New York PSC, which has ordered carriers to make available these mechanisms at incremental cost.^{28/} In addition, the Commission should create sufficient incentives to foster negotiations between competitors and incumbent LECs to implement other beneficial number retention solutions.

Once the Commission has ordered all incumbent LECs to furnish interim number retention, it should enforce its rules vigorously through forfeitures and other penalties. Given the importance of these measures to the emergence of competition in the local exchange marketplace, it is critical for the Commission to ensure that all LECs comply with these rules.

^{28/} New York Public Service Commission Case No. 84-C-0095, Order Requiring Interim Number Portability Directing A Study of the Feasibility of A Trial Of True Number Portability and Directing Further Collaboration at 4 (issued and effective March 8, 1995).

C. Costs Should be Allocated Equitably Among All Beneficiaries of Number Portability

Interim number retention will benefit all telecommunications consumers, not simply customers that utilize the services of competitive carriers. Consumers who switch to competitive local service providers will have the ability to retain their telephone numbers with the attendant savings that have been documented by many commenters in this proceeding. Those not switching service providers, however, will also benefit through lower prices, improved service, and enhanced diversity of innovative service options. Thus, the FCC should also reject arguments that the costs of deploying number portability should not be spread over the general base of telephone subscribers.^{29/} Consequently, the Commission should require the costs of interim number retention mechanisms to be recovered equitably through incremental cost-based rates from all carriers and customers, not just new entrants.^{30/}

In order to spread the costs of interim number retention equitably, the Commission at a minimum should require the recovery of costs through an annual surcharge similar to that utilized under the Rochester Open Market Plan ("OMP").^{31/} Under the OMP, parties agreed that instead of a monthly fee per number ported, each competitive carrier would pay

^{29/} Comments of United States Telephone Association at 15.

^{30/} See also Comments of Sprint Corporation at 18-19.

^{31/} New York Public Service Commission Case Nos. 93-C-0103 and 93-C-0033, Opinion and Order Approving Joint Stipulation and Agreement, Opinion and Order No. 94-25 (Issued and Effective November 10, 1994).

an annual surcharge based on the product of the incremental cost of switching and minutes of traffic forwarded to another carrier.^{32/}

The structure adopted under the OMP will promote interim competition because it reasonably allocates the true costs of number portability among all beneficiaries of the service. Conversely, where the level of charges for interim number retention are not reasonable and cost-based, those rates stifle rather than promote effective competition.^{33/}

Because incumbent carriers can potentially use the level of charges for number retention as an opportunity to foreclose competition, the Commission should establish regulations governing the cost of interim measures. In addition to requiring that the rates for interim number retention be cost-based, the Commission should also ensure that the costs for implementing number retention should not be treated exogenously under price caps.^{34/} The Commission should also seriously consider imposing interconnection discounts, as some commenters have proposed, so as to create necessary incentives for the rapid and efficient development and deployment of permanent number portability solutions.^{35/} Further, the Commission should make implementation of interim number retention a precondition for

^{32/} Id. at Joint Stipulation and Agreement at 48. The Commission should ensure further that related cost studies are performed in an auditable and verifiable manner to ensure costs are properly justified. See Comments of California Public Utility Commission at 9.

^{33/} For example, NYNEX currently charges \$4.00 per month per ported business line number, and \$2.00 per month per residential line number. These charges are completely prohibitive and severely hamper Lightpath's ability to compete in New York. Moreover, NYNEX is now construing this to refer to each path rather than the agreed upon charge per line number.

^{34/} See NYNEX Comments at 22.

^{35/} See, e.g., Comments of the National Cable Television Association at 13; Comments of Association for Local Telecommunications Services at 14-16.

granting price cap LECs the enhanced pricing flexibility currently being considered in the FCC's Price Cap Performance Review.^{36/}

IV. THE COMMISSION SHOULD FOSTER PERMANENT NUMBER PORTABILITY

Because interim measures are only temporary mechanisms made available by the LECs^{37/} and not true permanent number portability solutions, permanent database solutions are necessary to promote effective robust competition. While interim approaches to number portability are important to permit immediate competition to incumbent LECs, only permanent solutions can adequately secure true competition.

A. The Commission Should Establish An Implementation Timeline For Permanent Number Portability

The Commission should ensure that number portability is widely available as soon as possible if it truly seeks to foster robust local competition. The exigencies of the competitive market, however, provide incumbent LECs with substantial incentives to delay competition by stalling the implementation of service provider number portability.^{38/}

^{36/} Price Cap Performance Review for Local Exchange Carriers; Treatment of Operator Services Under Price Cap Regulation; Revisions to Price Cap Rules for AT&T, Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, And Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, FCC No. 95-393 at ¶ 29 (rel. Sept. 20, 1995); see also Comments of Time Warner at 15.

^{37/} See NYNEX Comments at 2 n.2.

^{38/} Demand for location and service portability is less certain at the present time and implementation of these types of portability raises significant questions. Consequently, the Commission should not attempt to develop location portability solutions at this time because of the serious practical problems associated with the geographic scope and billing problems associated with this type of portability. See Comments of Time Warner at 8.

Because the LECs are in a unique position to thwart the entry of competitive providers through their present control of number portability,^{39/} Commission intervention is necessary to prevent delay and ensure swift deployment. The Commission should establish firm timetables for the implementation of permanent number portability based upon the record in this proceeding regarding the likely timeframe for deployment of database portability. The Commission might also consider the imposition of regional deadlines for number portability, perhaps in areas that are more densely populated.^{40/} Along these lines, it may be appropriate to have the states, in the first instance, designate the geographic scope of service provider portability within its borders as was suggested by MCI.^{41/}

B. Each Carrier Should Bear Its Own Number Portability Costs

Like interim number retention cost recovery policies, all beneficiaries of permanent number portability should share in its costs. This includes all carriers and all customers. Moreover, given the overriding public interest benefits, carriers should only be permitted to recover the costs of service once it has been implemented rather than during the developmental phase.^{42/} Likewise, the FCC should reject fully the suggestion that there be

^{39/} For example, NYNEX suggests that the Commission await conclusion of unspecified state trials before proceeding. Comments of NYNEX at 18. Likewise, Airtouch suggests that additional time may be required to educate consumers. Comments of Airtouch Paging and Arch Communications Group at 6.

^{40/} See Comments of the Illinois Commerce Commission at 15.

^{41/} See Comments of MCI and MCImetro at 18-19.

^{42/} Such a course would thereby create the greatest incentives for the rapid development and deployment of a permanent solution.

a one-time per-line charge on end users who elect to switch carriers,^{43/} which will discourage end users from switching carriers and thwart the growth of viable competitive alternatives.

Once a permanent database solution has been implemented, all carriers should assume the common costs related to the administration and maintenance of databases. Each carrier should be required to maintain the database in proportion to its respective market share as measured by the number of subscriber lines.^{44/}

^{43/} Comments of the United States Telephone Association at 15.

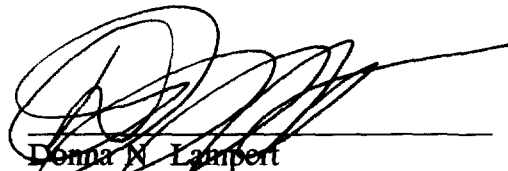
^{44/} See Time Warner Comments at 23.

CONCLUSION

For the foregoing reasons, Lightpath respectfully requests that the Commission adopt service provider number portability regulations that reflect the positions taken in this submission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cheryl S. Flood, hereby certify that on this 12th day of October, 1995, a copy of the foregoing "Reply Comments Of Cablevision Lightpath, Inc." was delivered by hand or by first-class mail, postage prepaid, to each of the parties listed below.


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